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February 15, 2013

Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Attn: Ms. Melissa Jurgens, Secretary

Re: RIN 3038-AD88: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 77 Fed Reg 67866 (November 14, 2012)

The Commodity Markets Council (“CMC”) commends the Commodity Futures Trading Commission (“CFTC” or “Commission”) for its efforts to enhance customer protections.

CMC is an industry trade association that brings together the interests of commercial end users, futures commission merchants (“FCMs”), liquidity providers, other commodity market participants and regulated derivatives exchanges. Our end user members trade daily very large volumes of agricultural and energy commodity derivatives contracts on global exchanges, including on CMC’s member exchanges. CMC’s membership list supporting this letter is provided in the addendum.

CMC members were very significantly impacted by the failures of MF Global and the Peregrine Financial Group, and we have joined in industry efforts to date to strengthen customer protections related to client funds held at FCMs. CMC supports actions taken by the industry such as daily monitoring of excess funds by Designated Self Regulatory Organizations (“DSROs”) for potential unapproved disbursements through daily FCM reporting of segregation, secured and cleared Over The Counter (“OTC”) amounts; and mandatory authorization by firms to allow DSROs to use electronic confirmation service to review balances.

CMC also supports several provisions in the above referenced proposed rule-making. For example, we support the specific proposed change to Part 30.7 that would provide all customers, be they foreign or domestic, with the protections promulgated via the Commodity Exchange Act and its corresponding rules and regulations. Current rules allow for an FCM to not segregate funds deposited by a foreign customer as well as positions trading on a Foreign Board Of Trade (“FBOT”) for these customers; conversely, the new proposed definition of a 30.7 customer will mandate that an FCM segregate funds deposited by a foreign customer as well as the corresponding FBOT trading positions.

However, as a trade association representing commercial end users and the full continuum of the futures market participants, we are concerned with provisions in the proposed rule which would dramatically increase the cost of futures markets for end users and FCMs.

Specifically, CMC believes that the proposal to require FCMs to maintain a residual amount sufficient to cover daily the aggregate of customer margin deficits could create liquidity issues and increase costs for FCMs and end users. Such a decrease in liquidity could be substantial, and limit the number and type of transactions FCMs clear, the number of customers they service and the amount of financing they provide. The proposal would require FCMs to fund their customer segregated and secured accounts with proprietary assets in excess of the aggregated margin deficiencies of all its clients, at a minimum, prior to any margin payments being made to a clearinghouse. The proposal also appears to require executing FCMs to collect collateral for give-ups so that customer positions are fully margined in the event a trade is rejected by a clearing FCM.

If the proposed residual interest provision were to be finalized, FCMs may be forced to take steps such as over-margining clients, requiring clients to pre-fund their margin requirements, imposing punitive interest rate charges on margin deficit balances, and introducing intra-day margin calls. Such steps would dramatically increase the cost of using futures markets and may force many end users to decrease or discontinue hedging and risk management practices.

We believe that the aforementioned actions taken to date by the DSROs, FCMs and the industry have strengthened customer protections. We also believe that many other proposals of the CFTC will help entities protect themselves against “fellow customer risk” at their clearing FCMs, including but not limited to those contained in CFTC proposed rule 1.55k(10), which would require FCMs to provide more transparency regarding the smallest number of clients that comprise 50% of the FCM’s total funds held for its customers, as well as information related to write-offs of customer balances as uncollectable during the prior 12-month period.

CMC strongly supports efforts to enhance customer protections, but as with any new regulations, one needs to weigh benefits conferred by regulatory changes with the costs imposed, and ensure that the benefits outweigh the costs. We also need to identify and understand the potential unintended adverse consequences if the Commission’s proposed rules are adopted.

Therefore, CMC respectfully asks the CFTC to refrain from finalizing the proposed residual interest rules until the Commission can work with industry to conduct adequate cost-benefit analysis of the proposed residual interest provision, particularly in the context of the full panoply of industry steps taken to date and other CFTC actions and proposals that have, and will continue to, strengthen customer protections.

We appreciate your consideration of this letter and look forward to working with you as needed in the weeks and months ahead. Should you have questions or wish to discuss this matter, I am available via email at sanjeev.joshi@commoditymks.org or by telephone at (202) 842-0400 – ext. 103.

Sincerely,

A handwritten signature in black ink that reads "S Joshipura". The signature is written in a cursive, slightly slanted style.

Sanjeev Joshipura
President
Commodity Markets Council

Addendum

List of CMC Members Supporting this Letter

Exchange Members

BM&FBOVESPA
Bursa Malaysia Derivatives Berhad
Chicago Board of Trade
Chicago Mercantile Exchange
ICE Futures U.S.
Kansas City Board of Trade
Minneapolis Grain Exchange
New York Mercantile Exchange

Industry Members

ABN AMRO Clearing Chicago, LLC
AGL Resources
AgResource Company
Archer Daniels Midland
Avena Nordic Grain
BP Corporation North America
BNSF Railway
Brooks Grain, LLC
Brophy Commodities
Bunge
Cargill Inc.
Cereal Food Processors
CTC Trading Group, LLC
Farms Technology, LLC
FCStone, LLC
Futures International, LLC
Gator Trading Partners, LLC
Gavilon, LLC
Gresham Investment Management, LLC
Henderson & Lyman
Icarus Trading, LLC
Infinium Capital Management
Kraft Foods
Laymac, Inc.
Lincoln Grain Exchange
Louis Dreyfus Commodities
Macquarie Bank Limited
Mercuria Energy Trading
McNamara Options, LLC
Mocek, Greg
Rand Financial Services, Inc.

RJ O'Brien
Riverland Ag
Rosenthal Collins Group, LLC
The Andersons, Inc.
The Scoular Co.
Vermillion Asset Management
Virtu Financial, LLC